



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

December 20, 2011

CBCA 2525-TRAV

In the Matter of NICHOLAS KOZAUER

Nicholas Kozauer, Silver Spring, MD, Claimant.

Alexandra Meighan, Office of the General Counsel, Department of Health and Human Services, Washington, DC, appearing for Department of Health and Human Services.

WALTERS, Board Judge.

Claimant, Dr. Nicholas Kozauer, challenges his agency's disallowance of reimbursement for a hotel cancellation fee he incurred in connection with official overseas travel. For the reasons explained, the claim is denied.

Background

Claimant is a medical officer with the Center for Drug Evaluation and Research (CDER) of the Food and Drug Administration (FDA), Department of Health and Human Services (DHHS or agency). On approved official travel, he attended the Alzheimer's Association's International Conference on Alzheimers Disease from July 16 through July 21, 2011, in Paris, France. Several months prior to his trip overseas, Dr. Kozauer inquired of Ms. Barbara Shekitka, his agency travel preparer, as to how to go about securing a hotel for the upcoming conference. By two email messages dated May 5, 2011, Ms. Shekitka advised him:

You can book the room as long as you are going through the housing reservation office connected with the meeting.

and

. . . we will do better cost-wise to make reservations through the organization [the Alzheimer's Association] at what looks like a special rate for attendees. You can do that and send me the information. Use your government credit card.

This advice was modified the following day, May 6, 2011, in another email message to Dr. Kozauer, in which Ms. Shekitka told him that he could not “book just any hotel,” but that it had to be “a meeting-blocked one [by the Conference] or that I have to do it through Omega.”¹ She suggested three hotels to him, the first of which was the “Pullman Montparnasse.” In response to a further inquiry from claimant about incurring a cancellation fee were he to make a reservation that later would require cancelling, Ms. Shekitka advised: “I spoke to the management officer, who said not to worry about it. If we have to cancel your hotel reservation and rebook it, we will reimburse you for the fee.”

Following these instructions, claimant booked and retained his reservation for a “meeting-blocked” room at the Pullman Paris Montparnasse, charging the reservation to his government credit card.

On June 9, 2011, approximately one month before the conference was scheduled to start, Ms. Shekitka informed Dr. Kozauer that she had to make hotel reservations for him through Omega, the agency's TMC. She stated further that, although she tried to have Omega take over Dr. Kozauer's reservation, she was unable to keep the hotel reservation at the Pullman Paris Montparnasse, because the Omega electronic system determined the rate Omega would have to pay there would be too expensive. Ms. Shekitka instead booked him a room through Omega at another hotel, the Radisson Blu, at a \$325 per night rate, i.e., a rate within the \$410 per diem lodging rate maximum for Paris. Ms. Shekitka, in her email message to Dr. Kozauer of that date, states: “Let me know if you have any problem with cancelling your reservation with the Pullman Montparnasse.”

Subsequently, when Dr. Kozauer attempted to cancel his reservation with the Pullman Montparnasse, he was told that the hotel would charge him a cancellation fee equal to 100% of his room rate for the entire five night stay (since the cancellation was after the cutoff date). Ultimately, a cancellation fee was negotiated for 50% of the total, or \$838. Thereafter, Dr. Kozauer sought reimbursement of the reduced \$838 cancellation fee. Contrary to earlier

¹ Omega is the FDA's travel management center (TMC), also known as a travel management service (TMS).

assurances, however, his claim was denied by the agency. Consequently, he sought review by the Board.

Discussion

In accordance with the Federal Travel Regulation (FTR), which governs travel by DHHS employees, unless an exception is granted by the head of the agency, i.e., the Secretary of Health and Human Services, or his/her designee under very narrow circumstances specified in the regulations,² it is mandatory that an employee make arrangements for official travel through either the E-Gov Travel Service (ETS) or through the agency's existing(TMS). 41 CFR 301-50.3 (2011). None of the circumstances that would justify any exception would apply here. The regulation further provides that, where the employee fails to use either the ETS or its agency's TMS, he/she will have to bear responsibility for any additional costs, including, *inter alia*, "cancellation fees." 41 CFR 301-50.5. There is no authority, under statute or regulation, for shifting such responsibility to the Government.

In this case, it is uncontested that Dr. Kozauer would not have incurred the cancellation fee in question had it not been for his reliance on clearly erroneous advice provided by the agency's travel preparer and on her guarantee that any cancellation fee would be reimbursed. Indeed, it was because of the agency's recognition that such advice had been at the root of the problem that the agency representative requested and was granted from the Board additional time to investigate the facts to determine whether there was any possible way to extend relief to Dr. Kozauer. It is unfortunate, as the agency representative ultimately concluded, that such relief is not available.

The Board has repeatedly held that detrimental reliance on erroneous advice from a

² Under FTR, 41 CFR 301-50.4, exceptions to the requirement for use of the agency's TMS or (ETS) must meet one of the following conditions:

- (a) Such use would result in an unreasonable burden on mission accomplishment (e.g., emergency travel is involved and TMS/ETS is not accessible; you are performing invitational travel; or you have special needs or require disability accommodations under part 301-13 of this chapter).
- (b) Such use would compromise a national security interest.
- (c) Such use might endanger your life (e.g., you are traveling under the Federal witness protection program, or you are a threatened law enforcement/investigative officer traveling under part 301-31 of this chapter).

government official will not confer on a claimant entitlement to recovery, where there is no authority under statute and regulation for the relief being sought. *Kristin L. Loer*, CBCA 2155-RELO, 11-1 BCA ¶ 34,700; *Carl H. Welborn, Jr.*, CBCA 2151-RELO, 11-1 BCA ¶34,650 (2010); *Barbara A. Maloney*, CBCA 2023-RELO, 10-2 BCA ¶ 34,593; *Romeo Ayalin III*, CBCA 1533-RELO, 09-2 BCA ¶ 34,218. The agency was correct in denying reimbursement to the claimant for the \$838 cancellation fee.

Decision

The claim is denied.

RICHARD C. WALTERS
Board Judge